

[NYNEX's] approach relies on a starting point assumption of a fixed number of NXX codes over NYNEX's planned time to implement relief. I have indicated the problems with that starting point assumption in my direct testimony. Additionally, and based upon the NYNEX policy objectives identified on page 8 of Mr. DeSisto's testimony, it should be pointed out that before a potential competitor of NYNEX can enter the market, an adequate supply of numbers must be available. Without numbers, the competition cannot compete (except perhaps by resale). The award of numbers based on a lottery does not enable new entrants to market services effectively, since their ability to market services effectively, since their ability to serve is undermined by the lack of NXX codes. Only NYNEX can market aggressively with the assurance that it alone has an adequate supply of NXX codes for its needs.

As stated in my direct testimony, the Department should act quickly to require NYNEX to expedite the implementation of area code relief to assure that in the interim there are enough telephone number for all new market entrants. Collins Rebuttal Testimony, pp 24-25 (emphasis added).

NYNEX's proposal also discourages facilities based telecommunications services and investment in Massachusetts. "[NYNEX's conservation measure] is the first lottery system to be used and it does not provide the assurance that facilities bases providers need to plan investments." Exhibit AG-6. Providers reselling telecommunications do not suffer the same disadvantage. Dr. Collins explains, using a first-come, first-served conservation measure as an example:

Then the question that [using a first-come, first-served measure] leads to is what about the other market entrants that will come later? They will have no codes, and that's true. But on the other hand, they may also have made no investment. And so, although they're not entering the market at the time they wish, they [non-facilities based providers] are not significantly disadvantaged by the result of wasting capital. Collins Testimony, 1:55.

Under a lottery system, facilities-based providers suffer the same disadvantage. Facilities-based providers are discouraged from making capital investment in Massachusetts without reasonable assurance of an adequate supply of telephone numbers.

The only way to equitably distribute the remaining NXX codes in 617 and 508 is to "provide relief as quickly as possible to eliminate the problem and then let the market be entrepreneurial, as the competitive marketplace is supposed to be." Collins Testimony, 1:54, 1 4-7, and 1:56, 1 10-14. NYNEX's witness Mr. DeSisto admits that "To the extent that [the implementation time] can be shortened, more exchange codes will be available for assignment on a month-by-month basis under the conservation procedure currently in place in the 617 area code." DeSisto Direct Testimony, p 6, 1 12-15. Mr. DeSisto concedes "that's in everybody's best interest, to get the area code relief implemented as quickly as possible so everyone will have the availability of more exchange codes to provide for their [business] plans . . . it's in our interest as well as everyone's interest to have these available." DeSisto Testimony, 4:104, 1 20-24 through 4:105, 1 2-4.

Dr. Collins testified that the NYNEX code conservation is inequitable:

First, I believe that there is a great deal of ambiguity and uncertainty about how and in what numbers the 617 Area Code NXXs have already been assigned and will need to be assigned in the next few years. Second, the need for the process depends on the Code Administrator's forecast of NXX use. Every forecast is based upon starting assumptions and guesses as to the future demand. None of the facts attendant to both of these factors have been examined in detail outside of NYNEX. The results of the NYNEX internal work is the projected usage and growth in required NXXs which NYNEX claims will exhaust the 617 NXX pool. This fact,

when put into context, is providing a platform for NYNEX to launch its anticompetitive Overlay strategy for implementing an increase in the number of NXXs in the 617 pool. The situation provides the opportunity for NYNEX to be extremely self serving.

When one considers the historical growth of NXX utilization the record makes two points. First, the competitors of NYNEX are starting off with the effect of exaggerating the percent of growth when any aggregate request for NXXs from NYNEX's competitors is compared to the number of NXXs in use by these competitors. To illustrate this point, if one makes an assumption that NYNEX has 90% of the 617 NXX codes, and both NYNEX and the aggregate NXX orders from its competitors for new codes are the same; the growth in demand by NYNEX will be only one ninth that of its competitors. This differential presents a distorted picture.

Second, if the utilization rate of NXX codes for NYNEX and its competitors are the same, assume 85%, NYNEX will have 900% more available codes than the aggregate number held by all of its competitors. The end result is that the rationing process affects and harms NYNEX's competitors to a far greater extent than it does NYNEX.

In addition, the allocation and lottery process can freeze potential market entrants out of the market entirely. In NYNEX's allocation plan there are only 5 new codes available each month plus any carry forward from prior months. A new market entrant cannot affirmatively expected to be awarded codes in any specific month. The availability is subject to a number of factors, such as the number of codes requested by others; the number of companies requesting codes; and whether or not codes remaining unallocated from the prior months have enlarged the pool of five. I believe it next to impossible to prove out a "business case" for entering the marketplace when an essential facility, such as telephone numbers, cannot be obtained with some degree of certainty.
Collins Direct Testimony, pp 18-19 (emphasis added).

NYNEX's forecasts have been wrong in the past. It's likely that the pressure on the number supply is even greater that NYNEX has projected, and the planning process

has already been delayed. The Central Office Code Guidelines state that the planning process should begin three years before the forecasted exhaust. NYNEX didn't notify the Department of an exhaust until November 1995, and then it notified the Department that "the 617 area code or NPA was in jeopardy of exhausting prior to the completion of the three-year planning and implementation cycle for the new area code." It delayed calling an industry meeting for about four months, and then its forecast turned out to be wrong. As mentioned, by the 2nd Quarter of 1996, NYNEX notified the Department that the 617 area code would exhaust by the end of the 4th Quarter of 1996, supposedly because of an "extremely high, unforecasted growth for the 617NPA." The Central Office Code Guidelines state that area code relief should typically be implemented 1 year before the area code exhaust date. The Guideline's definition of "NPA Code Relief", for example, states:

NPA code relief refers to an activity that must be performed when an NPA nears exhaust of its 640 NNX or the 792 NXX capacity. Relief is typically provided to an NPA about a year before its capacity is reached. . . . Providing area code relief to such an NPA normally takes the form of assigning a new NPA for an NPA split or overlay. Another option is changing the boundary of the existing NPA. Attachment 3 to DeSisto Direct Testimony.² (Emphasis added.)

Yet, despite NYNEX's misforecasts and tardiness in starting the relief process, and despite the Guidelines, the critically low supply of numbers, and the high demand for

² See also the Guideline's Time Line for Jeopardy Conservation Procedures which shows the NPA Relief Date as being 1 year before the Exhaust Date. Appendix D, page 3 of 6 to the Guidelines. Attachment 3 to Mr. DeSisto's Direct Testimony.

numbers, NYNEX wants to delay implementing area code relief for fifteen to eighteen months after the Department issues its order.

The pressure on the number supply is increasing, and relief should be expedited. Since this proceeding was initiated, NYNEX declared the 508 area code in jeopardy and has begun rationing NXX codes in that NPA, too. See Exhibit AG-81 and DeSisto Testimony, 4:169. In addition, since the hearing in this case, NYNEX has had to hold a lottery to determine which companies will receive NXX codes. On October 10, 1996, NYNEX notified providers:

Through September, there was no need to hold a lottery to determine which companies would receive NXX codes. However, a lottery will be held *next week* to determine which companies will receive the two growth codes available for the month of October. A total of six companies applied for codes this month - three for initial codes (all three will receive a code) and three for growth codes (two of the three will receive a code, to be determined by lottery). The lottery will take place at NYNEX's headquarters, *125 High Street, Room 1158, at 11 a.m. on Wednesday, October 16*. See Attachment A hereto.

The Department should order NYNEX to expedite a geographic split. Delaying the split (or an overlay) is anticompetitive, because it ensures that numbers will not be sufficiently available to its competitors and to the competitors of its affiliate, Bell Atlantic NYNEX Mobile. To the extent that the implementation time - both technical implementation and any permissive dialing and notice periods - can be shortened, the more exchange codes will be available for assignment during the conservation procedure. A sufficient supply of telephone numbers is a critical component of encouraging